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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/890,148	08/27/2001	Michael Zobel	Mo-6485/LeA33,061	7822

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BAYER CORPORATION
100 BAYER ROAD
PITTSBURGH, PA 15205

EXAMINER

SHORT, PATRICIA A

ART UNIT	PAPER NUMBER
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1712

10

DATE MAILED: 02/14/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/890/48

Applicant(s)

Zobel et al

Examiner

Shurt

Group Art Unit

1712

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period of Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on December 11, 2002
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 2-5, 7-9, 12, 13 is/are pending in the application.
- ☐ Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 2-5, 7-9, 12, 13 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Art Unit: 1712

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-5, 7-9, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pan alone or Pan in view of Grawbowski. The rejection is applied as in the previous Office action. Applicant argues that there is no motivation to modify the teaching of the prior art to produce the claimed invention and requests citation of a reference to support the position. Presumably, applicant is requesting citation of a reference to support the position that it would have been obvious to use an aluminum oxide colloid having a particle diameter of 1 nm to 20 μ m as the aluminum oxide colloid in the composition of Pan as modified by Grawbowski. Barney was cited in the first Office action to show that aluminum oxide colloids having a particle size of 2 nanograms are commercially available under the trademark of Nalco™ ISJ-614. See col. 3, lines 10-21. Pan teaches that the preferred aluminum colloid has a particle size of less than 1 micron. While Pan does not disclose the size of the aluminum oxide used in the examples, it is a colloid obtained from Nalco Chemical Co. Thus, it would have been obvious to use the aluminum oxide colloid having a particle size of 2 nanograms commercially available from Nalco as the aluminum oxide in order to obtain a flame retardant polycarbonate composition. The motivation of the references does not have to be the same as applicant's motivation. See *In re Dillion* 16 USPQ2d 1901 (Fed Cir. 1990).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

P. Short

February 11, 2003

Phone (703) 308-2395

Fax (703) 872-9311

PATRICIA A. SHORT
PRIMARY EXAMINER

Patricia A. Short